

**Sec. 24.1-372. EMA-Environmental management area overlay district.**

- (a) *Statement of intent.* In accordance with the objectives of the comprehensive plan, the environmental management area overlay regulations are intended to promote the proper use, management and protection of the vast amounts of sensitive and unique lands which contribute to the economy of the region and the environmental quality of the county and especially the Chesapeake Bay. ~~Specifically, these provisions are intended to apply to areas designated by the comprehensive plan as resource management and protection and to those areas designated by the county as Chesapeake Bay Preservation Areas pursuant to the requirements of sections 10.1-2100, et seq., Code of Virginia (the Chesapeake Bay Preservation Act) as shown on the Chesapeake Bay Preservation Area Map.~~

The effect of these provisions is not necessarily to preclude development or use of such areas but rather to ensure that the types of development permitted by the underlying zoning district will be undertaken with a deliberate and professionally responsible recognition of the particular environmental qualities and conditions of a proposed development site.

Certain portions of this section of the ordinance are enacted under the authority of Section 10.1-2100 et seq. of the Code of Virginia and are intended to implement the requirements of the Chesapeake Bay Preservation Act. The specific purposes of these provisions of this section are to:

- (1) ~~p~~Protect existing high quality state waters;
  - (2) ~~r~~Restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;
  - (3) ~~s~~Safeguard the clean waters of the Commonwealth from pollution;
  - (4) ~~p~~Prevent any increase in pollution;
  - (5) ~~r~~Reduce existing pollution; and
  - (6) ~~p~~Promote resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the county.
- (b) *Definitions.* For the purposes of this section, the following terms shall have the following meanings unless the context clearly indicates otherwise:

*Best management practices (BMPs).* A practice, or a combination of practices, that is determined by a state agency or the Hampton Roads Planning District Commission to be the most effective, practicable means of preventing or reducing

the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

Chesapeake Bay Preservation Area (CBPA). Any land designated by the county pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations, (9 VAC 10-20-70 et seq.), and sections 10.1-2107, et seq., Code of Virginia of the Chesapeake Preservation Act, as they may be amended from time to time. The Chesapeake Bay Preservation Area consists of a Resource Protection Area (RPA) and a Resource Management Area (RMA), and Intensely Developed Area (IDA).

Chesapeake Bay Preservation Area Map (CBPA Map). A map to be used as a guide that shows the general location of CBPA areas. The map is on file in the office of the zoning administrator and is hereby adopted by reference and declared to be part of this section. The Natural Resources Inventory will determine the exact boundaries of the CBPA.

Development. Any man-made change to improved or unimproved real estate including but not limited to buildings or other structures, excavating, mining, filling, grading or paving.

Development review process. The process for site plan, subdivision, land disturbing and building permit review to ensure compliance with section 10.1-2109, Code of Virginia and the York County Code, prior to any clearing or grading of a site or the issuance of a building or land disturbing permit.

Floodplain. All lands which likely would be inundated by floodwater as a result of a storm event of a 100-year return interval.

Highly erodible soils. Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula  $RKLS/T$ , where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

Impervious cover. A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to: roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted aggregate surface.

Intensely developed area (IDA). CBPA's where development is concentrated and meets the conditions outlined in 9VAC 10-20-100 and so indicated on the CBPA map adopted by the county and approved by the Chesapeake Bay Local Assistance Board.

*Nonpoint source pollution.* Pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agricultural and urban land use and development.

*Nontidal wetlands.* Those wetlands, other than tidal wetlands, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the US Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act in 33 CFR 328.3b, as may be amended from time to time.

*Noxious weeds.* Weeds that are difficult to control effectively such as Johnson Grass, Kudzu, and multiflora rose.

*Public Road.* A publicly owned road and the appurtenant structures designed and constructed by the Virginia Department of Transportation. ~~in accordance with the Erosion and Sediment Control Law (Section 10.5-560, et seq., Code of Virginia) and the Stormwater Management Act (Section 10.1-603.1 et seq., Code of Virginia) or an erosion and sediment control plan and a stormwater management plan approved by the Department of Conservation and Recreation.~~

*Redevelopment.* The process of developing land that is or has been previously developed.

*Resource Management Area (RMA).* That component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. The RMA is contiguous to and 500-feet landward of the Resource Protection Area **or the extent of the 100-year floodplain, whichever is greater.**

*Resource Protection Area (RPA).* That component of the Chesapeake Bay Preservation Area comprised of tidal wetlands; nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow; tidal shores; and a vegetated buffer not less than 100-feet in width located adjacent to and landward of the components listed above and along both sides of any water body with perennial flow. These lands have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts, which may result in significant degradation to the quality of state waters.

*Silvicultural Activities.* Forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to Section 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under Section 58.1-3230 of the Code of Virginia.

Tidal shore (shore). Land contiguous to a tidal body of water between the mean low water level and the mean high water level.

Tidal wetlands. Vegetated and nonvegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.

Water Body with Perennial Flow. A body of water flowing in a natural or man-made channel year-round during a year of normal rainfall. This includes, but is not limited to, streams, estuaries, and tidal embayments and may include drainage ditches or canals constructed in wetlands or from former natural drainage ways, which convey perennial flow. Lakes and ponds, through which a perennial stream flows, are a part of the perennial stream. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow.

Water-dependent facility. A development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to, ports, the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; marinas and other boat-docking structures; beaches and other public water-oriented recreation areas; and fisheries or other marine resources facilities.

Wetlands. Includes tidal and nontidal wetlands.

~~(b)~~(c) Applicability. The special provisions established in this section shall apply to the following environmental management areas:

- (1) Areas with an elevation of less than four feet ~~[1.25m]~~ above mean sea level;
- (2) Areas with slopes in excess of 20 percent;
- (3) Tidal and nontidal wetlands ~~as identified by the current U. S. Department of Interior, Fish and Wildlife Service, National Wetlands Inventory Maps;~~
- ~~(4) Areas designated by the county as Chesapeake Bay Preservation Areas;~~
- ~~(5)~~(4) Areas identified by the Virginia Department of Conservation and Recreation, Division of Natural Heritage in the publication entitled "Conservation Planning for the Natural Areas of the Lower Peninsula of Virginia, Technical Report 93-4," as may be amended from time to time. ~~Natural Areas Inventory of the Lower Peninsula of Virginia;~~ and
- (5) Areas identified as floodplains;
- (6) Areas identified as containing either hydric soils or soils with a moderate or higher shrink-swell potential in the current "Soil Survey of James City and

~~York Counties and the City of Williamsburg," published by the USDA Soil Conservation Service.~~ Areas with highly erodible soils;

(7) Areas designated by the county as Chesapeake Bay Preservation Areas (CBPA) composed of Resource Protection Areas (RPA), Resource Management Areas (RMA) and Intensely Developed Areas (IDA).

a. Such areas are designated, in general, on the CBPA Map, which is hereby adopted and made a part of this chapter by reference. The CBPA Map shows only the general location of the Chesapeake Bay Preservation Areas. It should be consulted by persons contemplating activities within the county prior to engaging in a regulated activity; however, the specific onsite location of the Chesapeake Bay Preservation Areas shall be delineated by the Natural Resources Inventory as required by subsection (f), below.

~~(e)(d)~~ Use regulations. Permitted uses, special permit uses, accessory uses, dimensional standards and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

~~(e)~~ Policies and Guidelines for Administering Environmental Management Areas. The zoning administrator shall prepare such policies and guidelines not inconsistent with this chapter as may be necessary to ensure the proper use, management, and protection of the environmental management areas. Such policies and guidelines shall be subject to approval by the Board of Supervisors, shall be kept on file in the zoning administrator's office and may be amended by resolution of the Board from time to time as conditions warrant. In the event situations arise that necessitate adjustments or supplements to such policies, the zoning administrator may promulgate interim guidelines. Such interim guidelines shall be submitted to the Board of Supervisors within 180 days after establishment and shall stand until the Board actually approves, disapproves or modifies such interim guidelines.

~~(f)(d)~~ Special ~~Natural Resources Inventory and analysis~~ requirements.

(1) Natural resources inventory: A natural resources inventory, prepared and submitted in accordance with the provisions established herein, shall be required for all properties proposed for development ~~within the areas described above~~ in subsection (c).

a. The Inventory shall be prepared and certified by ~~one or more~~ a professional~~(s)~~ qualified to perform environmental inventories. Evidence of the professional qualifications of the person preparing the Inventory shall be submitted as a part of the Inventory. In the case of construction of individual single-family detached dwellings, the Inventory shall be required; however, professional preparation or certification shall not be required ~~unless~~ except for perennial stream

flow determination or unless professional involvement is deemed necessary by the zoning administrator because of the magnitude of land disturbance or the particular sensitivity of the location. Subdivisions effected through the subdivision ordinance shall comply fully with the terms of this section.

- b. The Inventory shall contain a plan sheet that clearly depicts the extent and location of any of the features and ~~or~~ areas defined in subsection (b~~c~~) above. For each feature and area, descriptive information such as slope percents, wetlands classification, soil type, etc., shall be provided.
- c. The applicant is responsible for having a site-specific in-field determination for perennial flow made by a qualified professional. The zoning administrator shall confirm the site-specific in-field perennial flow determination.
  - 1. For the purpose of determining whether water bodies have perennial flow, a scientifically valid system of in-field indicators of perennial flow must be used.
  - 2. The system for determining perennial flow is subject to the approval of the zoning administrator.
- ~~e.d.~~ The Inventory shall also contain a narrative element ~~that which~~ describes and defines the relative values of the natural resources defined in subsection (c) above which are found to be present on the site~~present~~, including flora and fauna, ~~and detailing the methods and procedures proposed to be utilized to ensure protection of the resources and environmental values provided, however, that the detail(s) required shall be limited to those which are related to the features defined in subsection (b) above which are found to be present on the site.~~
- e. The exact boundaries of the RPA shall be adjusted, as necessary, based on the site-specific in-field evaluation and the Natural Resources Inventory.

~~(2) Major water quality impact assessment.~~

~~For developments which have a land disturbance of more than ten thousand (10,000) square feet [925m<sup>2</sup>], or within a RPA, a major water quality impact assessment shall be required as part of the natural resources inventory. All major water quality impact assessments shall include the following information unless deemed unnecessary in writing by the zoning administrator:~~

- ~~a. An inventory and description of the proposed activity and its impact including, in writing, at a minimum the following:~~
- ~~1. Location of the components of the RPA, RMA, or natural areas, if any;~~
  - ~~2. Location and nature of any proposed structures, driveways or other impervious cover; areas of clearing and grading; and sewage disposal system;~~
  - ~~3. Type and location of proposed best management practices to mitigate the proposed development; and~~
  - ~~4. A hydrogeological element that describes:~~
    - ~~a) the existing topography, soils, hydrology, and geology of the site and adjacent lands;~~
    - ~~b) disturbance or destruction of wetlands and justification for such action;~~
    - ~~c) disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies;~~
    - ~~d) disruptions to existing hydrology including wetlands and stream circulation patterns;~~
    - ~~e) source location and description of proposed fill material;~~
    - ~~f) location of dredging and location of dumping area for such dredged material;~~
    - ~~g) location of and impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas;~~
    - ~~h) potential changes in water turbidity;~~
    - ~~i) potential changes in stormwater runoff, estimation of percent increase in impervious surface on site and type(s) of surfacing materials used and estimation of run-off quantities;~~
    - ~~j) potential changes in the level of nutrients and estimation of pre and post development pollutant loads;~~



- ~~\_\_\_\_\_ k) \_\_\_\_\_ percent of site to be cleared for project;~~
- ~~\_\_\_\_\_ l) \_\_\_\_\_ anticipated duration and phasing schedule of construction project; and~~
- ~~\_\_\_\_\_ m) \_\_\_\_\_ listing or copy of all requisite permits from all applicable agencies necessary to develop project and the status of acquisition of each.~~
- ~~\_\_\_\_\_ b. \_\_\_\_\_ A description of the proposed mitigative measures for the potential hydrogeological impacts. Potential mitigative measures include:~~
  - ~~\_\_\_\_\_ 1. \_\_\_\_\_ Proposed erosion and sediment control concepts which may include the following:~~
    - ~~\_\_\_\_\_ a) \_\_\_\_\_ minimization of cleared area;~~
    - ~~\_\_\_\_\_ b) \_\_\_\_\_ use of perimeter controls;~~
    - ~~\_\_\_\_\_ c) \_\_\_\_\_ reduction of runoff velocities; and~~
    - ~~\_\_\_\_\_ d) \_\_\_\_\_ provision of a schedule and personnel for site inspections; and~~
  - ~~\_\_\_\_\_ 2. \_\_\_\_\_ Proposed stormwater management concepts;~~
  - ~~\_\_\_\_\_ 3. \_\_\_\_\_ Construction of wetlands to replace those lost; and~~
  - ~~\_\_\_\_\_ 4. \_\_\_\_\_ Minimization of cut and fill.~~
- ~~\_\_\_\_\_ c. \_\_\_\_\_ A vegetative element that:~~
  - ~~\_\_\_\_\_ 1. \_\_\_\_\_ Identifies and delineates the location of all significant plant material on site, including all trees on site with a caliper of six inches (6") [150mm] or greater or the general locations of groups of trees;~~
  - ~~\_\_\_\_\_ 2. \_\_\_\_\_ Describes the impacts the development or use will have on the existing vegetation;~~
  - ~~\_\_\_\_\_ 3. \_\_\_\_\_ Describes the measures for potential mitigation which may include:~~
    - ~~\_\_\_\_\_ a) \_\_\_\_\_ a replanting schedule for trees and other significant vegetation removed for construction, including a list of plants and trees to be used;~~



- ~~b) demonstrating that the design of the plan has been accomplished to preserve to the greatest extent possible any mature trees and vegetation on the site and to provide maximum erosion control and overload flow benefits from such vegetation; and~~
- ~~c) demonstrating that the plants to be used are native to the area.~~
- ~~d. An aquatic and endangered species element that:~~
  - ~~1. Identifies and locates significant aquatic life on site and on adjacent lands. Information should include the following:~~
    - ~~a) shellfish beds;~~
    - ~~b) fish species in streams or rivers; and~~
    - ~~c) list of endangered species;~~
  - ~~2. Describes the impact the development will have on each of the existing aquatic and terrestrial species, including the impacts to habitats; and~~
  - ~~3. Describes the measures for mitigation, including:~~
    - ~~a) re-establishment of disturbed habitat areas; and~~
    - ~~b) a demonstration that the design of the plan has been accomplished to preserve to the greatest extent possible any significant aquatic and terrestrial species and habitat on the site.~~

~~(3) Minor water quality impact assessment.~~

- ~~a. A minor water quality impact assessment shall be required for development which has less than ten thousand (10,000) square feet [925m<sup>2</sup>] of land disturbance including individual single family detached residential structures. At a minimum, the minor impact assessment shall include the following:~~
  - ~~1. Area of land disturbance~~
  - ~~2. Dimensions of lot or parcel~~

3. ~~Location of building(s)~~
4. ~~Proposed construction relative to lot lines~~
5. ~~Location of water well(s)~~
6. ~~Location of on-site sewage disposal system~~
7. ~~Boundary of resource protection area~~

~~(4)f.~~ Natural resources inventories ~~and water quality impact analyses~~ shall be submitted to the zoning administrator for review and approval concurrent with the submission of applications for ~~review and approval of site plans, or subdivision plans, or applications for land disturbing permits or erosion and sediment control permits or building permits or any other activity that constitutes development.~~ The zoning administrator shall not approve the submitted documents unless the natural ~~processes~~features and ecological relationships inherent ~~in-on~~ the site ~~shall~~ have been identified ~~and an assessment of the impact of the proposed development on these processes and relationships shall be made and considered and the impacts shall have been mitigated to the maximum extent feasible as determined by the zoning administrator in consultation with any others~~ as deemed appropriate by the zoning administrator.

~~(e)~~(g) *Special performance standards.* Proposed development or redevelopment within ~~such-all~~ environmental management areas shall be planned and undertaken in accordance with the following standards, depending on the type(s) of natural features and resources present on the site:

- (1) Wetlands delineations shall be performed in accordance with the comprehensive onsite determination method specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987, as it may be amended from time to time.
- (2) All provisions of chapter 23.1, Wetlands, County Code, shall be observed where applicable.
- (3) All construction within flood ~~plain hazard~~ areas shall be in accordance with the requirements of section 24.1-373 of this chapter, the Uniform Statewide Building Code and any special requirements of the National Flood Insurance Program applicable to such area.
- (4) In areas having ~~naturally~~-existing ~~or proposed~~ slopes in excess of ~~twenty~~ 20 percent ~~(20%), or having highly erodible soils,~~ no roads, driveways, structures, or land disturbing activities shall be allowed except where no other practical option exists, as determined by the zoning administrator, and then,

such activities shall be conducted in a manner which ~~preserves the general contour of the land and~~ does not contribute to increased stormwater runoff velocities or erosion.

- (5) Clear cutting of trees shall not be permitted. However, the zoning administrator may permit selected thinning in areas located outside of the RPA based upon best management practices and in accordance with an approved plan. The provision shall not be deemed to preclude cutting or thinning necessitated by disease or infestation and recommended by the Virginia Department of Forestry or other qualified professional in areas outside the RPA.
- (6) For natural areas with a biodiversity ranking of B1 (outstanding significance), B2 (very high significance), or B3 (high significance), placement of a conservation easement or other development restriction within the secondary ecological boundary as defined by ~~the~~ Technical Report 93-4, by the Division of Natural Heritage, Virginia Department of Conservation and Recreation, as may be amended from time to time, shall be shown on the plan. Biodiversity rankings between B1 and B3 indicate natural resources of global or state significance. For areas with a B4 or B5 ranking, necessary federal and state permit approvals required under the Federal Clean Water Act, Endangered Species Act, Chesapeake Bay Preservation Ordinance, or state and county wetlands laws and regulations shall suffice as proper environmental authorization.
- ~~(7) Soils with a moderate to high shrink swell potential as identified in the Soil Survey of James City and York Counties and the City of Williamsburg Virginia shall be noted on the development plan and accompanied by a geotechnical report with recommendations concerning structural support of any proposed buildings and any ameliorating actions necessary prior to development.~~
- ~~(f)~~ (h) *Special requirements for Chesapeake Bay Preservation Areas.* In addition to the requirements established above, all development within the ~~Chesapeake Bay Preservation Areas~~ as generally designated on the adopted ~~Chesapeake Bay Preservation Area Map~~ adopted by the county and as specifically delineated on site per the requirements of subsection (f), above, shall conform with the following ~~provisions of this subsection.~~
- ~~(1) The following words and terms used in this section shall have the following meaning(s) unless the context clearly indicates otherwise:~~
- ~~*Best management practices or "BMPs". A practice, or a combination of practices, that is determined by a state or designated area wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources.*~~

~~Chesapeake Bay Preservation Area or "CBPA". Any land designated by the county pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations, VR 173-02-01, and sections 10.1-2100, et seq., Code of Virginia. The Chesapeake Bay Preservation Area consists of a resource protection area and a resource management area.~~

~~Development. The construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures.~~

~~Development review process. The process for site plan or subdivision review and building permit review to ensure compliance with section 10.1-2109, Code of Virginia and the York County Code, prior to any clearing or grading of a site or the issuance of a building permit.~~

~~Environmental site assessment. A map drawn to scale which identifies tidal shorelines, tidal wetlands, contiguous nontidal wetlands, the 100 foot [30m] RPA buffer, and landward edge of the RMA.~~

~~Floodplain. All lands which likely would be inundated by flood water as a result of a storm event of a 100-year return interval as delineated on the Flood Insurance Rate Map (FIRM) dated December 16, 1988, as it may be amended from time to time.~~

~~Highly erodible soils. Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight (8). The erodibility index for any soil is defined as the product of the formula  $RKLS/T$ , as defined by the "Food Security Act (F.S.A) Manual" of August, 1988 in the Field Office Technical Guide of the U. S. Department of Agriculture Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.~~

~~Highly permeable soils. Soils having a permeability equal to or greater than six inches (6") [150mm] of water movement per hour in any part of the soil profile to a depth of 72 inches [1850mm] (permeability groups "rapid" and "very rapid") as found in the "National Soils Handbook" of July 1983, in the Field Office Technical Guide of the U. S. Department of Agriculture Soil Conservation Service.~~

~~Impervious cover. A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to: roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted aggregate surface.~~

~~*Intensely developed area.*—A portion of a resource protection area or a resource management area designated by the county where development is concentrated and little of the natural environment remains.~~

~~*Nonpoint source pollution.*—Includes, but is not limited to: increases in water temperature and impacts to biological processes resulting from land use activities and water borne pollutants including sediment, nutrients such as phosphorus and nitrogen, bacteria, viruses, oxygen consuming substances, hydrocarbons such as fuels and lubricants, toxic metals such as lead, zinc, copper, toxic chemicals and chlorides.~~

~~*Nontidal wetlands.*—Those wetlands, other than tidal wetlands, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated 1987, as it may be amended from time to time.~~

~~*Noxious weeds.*—Weeds that are difficult to control effectively such as Johnson Grass, Kudzu, and multiflora rose.~~

~~*Redevelopment.*—The process of developing land that is or has been previously developed.~~

~~*Resource management area or "RMA".*—That component of the Chesapeake Bay Preservation Area that is not classified as the resource protection area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.~~

~~*Resource protection area or "RPA".*—That component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.~~

~~*RPA buffer.*—An area of natural or established vegetation managed to protect other components of a resource protection area and state waters from significant degradation due to land disturbances.~~

~~*Tidal shore or "shore".*—Land contiguous to a tidal body of water that lies between the mean low water level and the mean high water level.~~

~~*Tidal wetlands.*—Vegetated and nonvegetated wetlands as defined in chapter 23.1 of the Code.~~

~~*Tributary stream.* Any perennial stream that is so depicted on the most recent U. S. Geological Survey 7½ minute topographic quadrangle map (scale 1:24,000) unless otherwise proven through field verification.~~

~~*Water dependent facility.* A development of land that cannot exist outside of the resource protection area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to, ports; the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; marinas and other boat docking structures; beaches and other public water-oriented recreation areas; and fisheries or other marine resources facilities.~~

~~*Wetlands.* Includes tidal and nontidal wetlands.~~

~~(2) The Chesapeake Bay Preservation Area is composed of the RPA, the RMA and the IDA.~~

~~a. The resource protection area (RPA) includes:~~

- ~~1. Tidal wetlands;~~
- ~~2. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams;~~
- ~~3. Tidal shores;~~
- ~~4. A one hundred foot (100') [30m] vegetated buffer area located adjacent to and landward of the components listed above, and along both sides of any tributary stream.~~

~~b. The resource management area (RMA) is contiguous to the resource protection area and has been drawn to give consideration to inclusion of the following land categories:~~

- ~~1. Floodplains;~~
- ~~2. Highly erodible soils, including slopes in excess of twenty percent (20%);~~
- ~~3. Highly permeable soils;~~
- ~~4. Certain nontidal wetlands not included in the RPA;~~
- ~~5. Other lands necessary to minimize erosion, reduce application of nutrients, and maximize water infiltration.~~



~~c. Intensely developed areas (IDA) include those locations so indicated on the Chesapeake Bay Preservation Area Map; and~~

~~d. The Chesapeake Bay Preservation Area regulations established herein shall apply to all lands identified as resource protection areas, resource management areas, and intensely developed areas as shown on the Chesapeake Bay Preservation Area Map. The map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this section.~~

~~A copy of the Chesapeake Bay Preservation Area Map shall be filed in the office of the zoning administrator.~~

(31) *Lot size.* Lot size shall be subject to the requirements of the underlying zoning district(s), provided, however, that any newly created lot shall have sufficient area outside the RPA within which to accommodate the intended development in full accordance with the performance standards in this section so that no land disturbance will occur in the RPA, when except for such intended development is not otherwise specifically allowed in the RPA by this section. On newly created lots, all required setbacks as defined in Section 24.1-104 must be measured from the landward edge of the RPA buffer.

*(4) Use regulations*

~~a. Development in RPAs may be allowed only if it:~~

~~1. Is water dependent; or~~

~~2. Constitutes redevelopment.~~

~~b. A new or expanded water dependent facility may be allowed provided that:~~

~~1. It does not conflict with the comprehensive plan;~~

~~2. It complies with the performance criteria set forth in this section;~~

~~3. Any non water dependent component is located outside of the resource protection area; and~~

~~4. Access will be provided with the minimum disturbance necessary. Where possible, a single point of access will be provided.~~



~~(5) Interpretation of resource protection area and resource management area boundaries.~~

~~a. Delineation by the applicant. The Chesapeake Bay Preservation Area Map shall be used as a guide to the general location of resource protection areas and resource management areas. The site specific boundaries of the resource protection area and the resource management area ordinarily shall be determined by the applicant for development approval through the performance of an environmental site assessment, subject to approval by the zoning administrator and in accordance with this section. Such site specific delineation shall be performed by a professional qualified to do such analyses and delineations. Evidence of professional qualifications of the person preparing the analysis and delineation shall be submitted as a part of environmental site assessments.~~

~~b. Where conflict arises over delineation. Where the applicant has provided a site specific delineation of the RPA or RMA, the zoning administrator will verify the accuracy of the boundary delineation. In determining the site specific RPA or RMA boundaries the zoning administrator may render adjustments to the applicant's boundary delineation, in accordance with the criteria for the resource protection area and the resource management area.~~

~~(62)~~ **CBPA** Performance standards. General performance standards for development and redevelopment in RPA's and RMA's shall be as follows:

- a. No more land shall be disturbed than is necessary to provide for the ~~desired~~**proposed** use or development.
- b. All land development shall minimize impervious cover consistent with the **proposed** use or development ~~allowed~~.
- c. ~~Indigenous~~**Existing** vegetation shall be preserved to the maximum extent ~~possible~~**practicable** consistent with the use ~~and or~~ development ~~allowed~~**proposed**.
- d. Any activity which will cause more than ~~two thousand five hundred (2,500)~~ square feet ~~[230m<sup>2</sup>]~~ of land disturbance, including construction of single-family houses and installation of septic tanks and drainfields, shall comply with the requirements of chapter 10, Erosion and Sediment Control and all other aspects of the county development review process.
- e. ~~Stormwater runoff shall be controlled by the use of best management practices that achieve the following:~~ **Stormwater management crite-**

ria consistent with the water quality protection provisions (4VAC 3-20-10 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20), as they may be amended from time to time, shall be satisfied.

1. For development, the post-development nonpoint source pollution runoff load shall not exceed the predevelopment load, based on the Chesapeake Bay default value for phosphorus loading of 0.45 pounds/acre/year calculated average land cover condition for the Virginia Chesapeake Bay Watershed with an average total phosphorus loading of 0.45 pound/acre/year [500g/ha/year] and an equivalent impervious cover of sixteen percent ~~(16%)~~.
2. For sites within IDA's ~~intensely developed areas~~ or other isolated redevelopment sites, the existing nonpoint source pollution load shall be reduced by at least ten percent ~~(10%)~~. The zoning administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided, however, that in no case may the post-development nonpoint source pollution runoff load exceed the predevelopment load. ***For a redevelopment site that is completely impervious as currently developed, restoring the site to a minimum twenty percent (20%) vegetated open space shall be considered to comply with this provision.***
3. ~~The following stormwater management options shall be considered to comply with the stormwater runoff regulations of this subsection:~~
  - a) ~~Incorporation on the site of best management practices that achieve the no net increase or ten percent (10%) reduction standard, as the case may be;~~
  - b) ~~Compliance with a regional stormwater management program adopted pursuant to the authority provided in section 25.1-466(j), Code of Virginia that results in achievement of equivalent water quality protection; or~~
  - c) ~~Compliance with a state or local program of stormwater discharge permits implemented pursuant to section 402(p) of the federal Clean Water Act, as set forth in 40 C.F.R. Parts 122, 123, 124, and 504, dated December 7, 1988.~~

43. Any maintenance, alteration, use or improvement to an existing structure, which does not increase the impervious area nor degrade the quality of surface water discharge, as determined by the zoning administrator, may be exempted from the requirements of this subsection.
- f. The functionality and maintenance of ~~Wherever~~ best management practices ~~require regular or periodic maintenance in order to continue their functions, such maintenance~~ shall be ensured by the owner or developer ~~zoning administrator~~ through a maintenance agreement ~~with the owner(s) or developer, approved as to form by the county attorney, whereby the owner shall covenant to perform perpetual maintenance of any such BMP and grant authority to the county to perform such work at the owner's cost if the owner should default on his obligations. The owner or developer shall cause such agreement to be recorded by the clerk of the circuit court and provide evidence of such recordation to the zoning administrator. or through some other mechanism that achieves an equivalent objective. Execution of such an agreement by the owner shall be required prior to the issuance of building or land disturbing permits, which ever shall occur first.~~
- g. All on-site sewage soil absorption ~~treatment~~ systems not requiring a Virginia Pollution Discharge Elimination System (VPDES) permit shall be pumped out at least once every five ~~(5)~~ years or otherwise maintained in accordance with Section 18.1-40(f) of the County Code.
- h. A ~~reserve sewage disposal site~~ secondary sewage soil absorption area with a capacity at least equal to that of the primary ~~sewage disposal site~~ absorption area shall be provided for ~~new construction every lot proposed for development~~ where public sanitary sewers ~~are~~ is not available in accordance with Section 18.1-40(c) of the York County Code. ~~This requirement shall not apply to any lot or parcel lawfully created prior to October 1, 1989, if such lot or parcel is determined by the local health department to be insufficient in capacity to accommodate a reserve sewage disposal site. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites, including reserve~~ the secondary sewage soil absorption areas, ~~or on an on site sewage treatment system which operates under a permit issued by the State Water Control Board, until the lot or parcel is served by public sewer.~~
- i. Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, dairy and feedlot operations or lands otherwise defined as agricultural, shall have a soil

and water quality conservation ~~plan~~ assessment conducted and approved in accordance with the CBPA Regulations (9VAC10-20-120.9), as may be amended from time to time. ~~Such plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with this ordinance. Such a plan shall be submitted to and approved by the Colonial Soil and Water Conservation District by January 1, 1995.~~

j. Silvicultural activities in the CBPA are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the "Virginia's Forestry Best Management Practices for Water Quality" as may be amended from time to time.

j.k. Prior to initiating grading or other on-site development activities on any portion of a lot, all wetlands permits required by federal, state, and county laws and regulations shall be obtained and evidence of such submitted to the zoning administrator.

(3) *Water Quality Impact Assessments (WQIA).*

a. A water quality impact assessment (WQIA) shall be required for:

1. Any proposed land disturbance, development or redevelopment activity within a RPA as permitted by this section;
2. Any buffer modification, noncomplying use and development waiver, variance or encroachment as provided for in this section;
3. Any development activity in the RMA as deemed necessary by the zoning administrator due to the unique site characteristics or intensity of the proposed use or development.

b. The purpose of the WQIA is to:

1. Identify the impacts of proposed land disturbance, development or redevelopment on water quality and lands in the RPA and other environmentally sensitive lands;
2. Ensure that where land disturbance, development or redevelopment does take place within the RPA and other sensitive lands, it will occur on those portions of the site and in a manner that will be least disruptive to the natural functions of the RPA and other sensitive lands;

3. Provide documentation for requests for development approval or administrative relief from terms of this section when warranted and in accordance with the requirements contained herein; and
  4. Specify mitigation that will address water quality protection.
- c. A WQIA shall include a narrative and site drawings that address the evaluation criteria and that depict, address and includes the following:
1. Location of the components of the RPA;
  2. Location and nature of the proposed encroachment, noncomplying use or development waiver, variance or modification of the buffer area, including: type of paving material; areas of clearing; filling or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
  3. Type and location of proposed best management practices and supporting calculations to mitigate any proposed encroachment and/or modification;
  4. Location of existing vegetation, including the number and type of trees and other vegetation in the buffer proposed to be removed to accommodate the encroachment, noncomplying use and development waiver, variance or modification, and identification of trees to remain;
  5. Revegetation plan that supplements the existing buffer vegetation and specifies the proposed replacement vegetation in accordance with the Buffer Guidelines.
  6. Erosion and sediment control and construction sequencing; and
  7. A copy of all required permits from all applicable agencies necessary to develop the project or a status of the acquisition of each.
- d. The WQIA shall be submitted to the zoning administrator for review and approval concurrent with the submission of applications for review and approval of site plans, subdivision plans, applications for land disturbing activity permits, building permits, buffer modifica-

tion, buffer encroachment, noncomplying use and development waiver, allowable land development, redevelopment or variances.

e. Upon completing review of a WOIA the zoning administrator will determine whether the proposed buffer modification, buffer encroachment, noncomplying use and development waiver, land development, redevelopment or application for a variance is consistent with the provisions of this section and make a finding based upon the following evaluation criteria:

1. Any proposed encroachment is necessary to accommodate the proposed improvements and it is not practicable to place improvements elsewhere on the site to avoid disturbance of the buffer area;
2. Impervious surface and vegetative disturbances are minimized;
3. Proposed mitigation measures, including the revegetation plan and site design, result in a minimal disturbance to all components of the RPA including the 100-foot buffer area;
4. Proposed mitigation measures will effectively retain all buffer area functions: pollutant removal, erosion and runoff control;
5. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
6. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

f. The zoning administrator may require additional mitigation where potential impacts have not been adequately addressed.

**(74) RPA buffer area requirements.**

- a. To minimize the adverse effects of human activities on the other components of ~~resource protection areas~~ the RPA, state waters, and aquatic life, a ~~one hundred 100-foot (100')~~ [30m]-wide buffer area of vegetation as described in the Buffer Guidelines shall be provided. The purpose of the buffer that is to effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff and it shall be retained if present and established where it does not exist in accordance with the Buffer Guidelines.



- b. For purposes of calculating the impact of the proposed development on water quality, The the required one hundred 100-foot (100') [30m] wide RPA buffer area shall be deemed to achieve a seventy-five percent (75% percent) reduction of sediments and a forty percent (40% percent) reduction of nutrients. A combination of a buffer area not less than fifty feet (50') [15m] in width and appropriate best management practices located landward of the buffer area which collectively achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the full one hundred foot (100') [30m], buffer area may be employed in lieu of the one hundred foot (100') [30m] buffer if approved by the zoning administrator after consideration of the findings contained in the Natural Resources Inventory required by this section.
- c. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this section. Reestablishment must be accomplished in accordance with the Buffer Guidelines, as may be amended from time to time.
- e.d. The RPA buffer shall be maintained to meet the following additional performance standards: Permitted modifications of the buffer area:
1. In order to maintain the functional value of the buffer area, indigenous Existing woody vegetation may be removed to provide for reasonable sight lines, access paths, general woodlot management, and shoreline erosion control best management practices, if authorized by the zoning administrator, on a case-by-case basis, upon presentation submittal of a WQIA documenting ation that the RPA buffer functions will be maintained and vegetation will be replaced, will still function in a manner that protects water quality. Such vegetation shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. The following guidelines shall be observed:
    - a) Trees may be thinned and pruned only as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff in accordance with the Buffer Guidelines.



b) Any access path shall be constructed and surfaced so as to effectively control erosion and aligned to minimize tree removal and environmental impact.

c) For approved shoreline erosion control best management practices projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice, and applicable permit conditions or requirements and in accordance with the Buffer Guidelines.

2.d) Dead, or diseased, or dying trees or shrubbery may be removed at the discretion of the landowner, and silvicultural thinning may be conducted based upon the recommendation of a professional forester or arborist, pursuant to sound horticultural practice in accordance with the Buffer Guidelines.

3. ~~When the application of the RPA buffer would result in the loss of an adequate, as determined by the zoning administrator, buildable area on a lot or parcel legally created prior to October 1, 1989, the zoning administrator may permit an encroachment into the buffer area in accordance with following criteria:~~

a) ~~Modifications to the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.~~

b) ~~Where possible, an area equal to the area encroaching within the buffer area shall be established elsewhere on the lot or parcel in a way which will maximize water quality protection.~~

~~In no case shall the buffer area be reduced to less than fifty feet (50') [15m] in width. If the one hundred foot (100') [30m] wide RPA buffer is reduced, the area by which the RPA buffer is reduced shall be included in the resource management area (RMA).~~

~~Redevelopment within intensely developed areas may be exempt from the RPA buffer requirement in accordance with the development review process, provided that the water quality standards found in section 24.1 372(g)(3), Performance Standards can be achieved.~~

e ~~On land used for agricultural purposes, the agricultural buffer area shall be managed to prevent concentrated flows of~~

~~surface water from breaching the buffer area and noxious weeds from invading the buffer area. The agricultural buffer area may be reduced as follows:~~

- ~~1. To a minimum width of fifty feet (50') [15m] when the adjacent land is implementing an agricultural Best Management Practices program funded by the federal, state, or local government, provided that the combination of the reduced buffer area and the best management practices achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the one hundred foot (100') [30m] buffer area.~~
- ~~2. To a minimum width of twenty five feet (25') [7.5m] when a soil and water quality conservation plan, as approved by the Colonial Soil and Water Conservation District, has been implemented on the adjacent land. Such plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and shall accomplish water quality protection equal with this section~~
- ~~3. The buffer area is not required along agricultural drainage ditches if the adjacent agricultural land has in place Best Management Practices in accordance with a conservation plan approved by the Colonial Soil and Water Conservation District.~~
- ~~f. Nothing contained herein shall be construed to prevent an RPA buffer area from being used to fulfill minimum open space standards required elsewhere in this ordinance.~~

e) The following modifications to the buffer do not require a WQIA or plan approval if performed as described in the Buffer Guidelines:

(i) Home landscaping such as pruning, mowing, mulching; and

(ii) Removal of noxious weeds provided they are replaced with vegetation equally suited for the growing environment and no land disturbance takes place.

- e. On land used for agricultural purposes, the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area provided that the provisions of Virginia's Chesapeake Bay Preservation Area Designation and Management Regulations (Section 9

VAC 10-20-130.5b 1-5 and 10-20-120.9) as they may be amended from time to time, are met.

f. Permitted encroachments into the buffer area

31. When the application of the RPA buffer would result in the loss of an adequate, as determined by the zoning administrator, buildable area on a lot or parcel legally created prior to October 1, 1989 *or on a lot or parcel legally created prior to (date of adoption of this amended ordinance)* and effected by a perennial stream determination, the zoning administrator may permit an encroachment into the buffer area in accordance with following criteria:

- a) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities. Detached accessory structures shall not be eligible for encroachment authorizations.
- b) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot.
- c) The encroachment may not extend into the seaward 50 feet of the buffer area.
- d) Encroachments into the buffer processed through an administrative review shall be subject to the findings required by subsection (8)a but without the requirement for a public hearing, such findings to be made instead by the zoning administrator.

2. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

- a) The lot or parcel was created as a result of a legal process conducted in conformity with the County's subdivision regulations;

- b) Conditions or mitigation measures imposed through a previously approved exception shall be met;
    - c) If the use of a BMP was previously required, the BMP shall be evaluated to determine if it continues to function effectively and if necessary the BMP shall be reestablished or repaired and maintained as required; and
    - d) The criteria of subdivision f.1. of this section shall be met.
  - g. Redevelopment within IDA's may be exempt from the RPA buffer requirement in accordance with the development review process, provided that the water quality standards found in section 24.1-372(h)(2), Performance Standards, can be achieved.
  - h. Nothing contained herein shall be construed to prevent an RPA buffer area from being used to fulfill minimum open space standards required elsewhere in this chapter.
- (5) Land Development may be allowed in the Resource Protection Area, subject to zoning administrator review and approval, and only if it is one or more of the following:
- a. Is a new or expanded water-dependent facility provided; or
    - 1. It does not conflict with the comprehensive plan;
    - 2. It complies with the performance criteria set forth in this section;
    - 3. Any non-water-dependent component is located outside of the RPA; and
    - 4. Access through the RPA to the water dependent facility will be provided with the minimum disturbance necessary. Where possiblepracticable, a single point of access will be provided.
  - b. Constitutes redevelopment outside of an IDA and there is no increase in impervious area in the RPA, no further encroachment in the RPA and all applicable erosion and sediment control and storm-water management criteria are observed.
  - c. Constitutes development or redevelopment within an IDA.

- ~~b.d.~~ Is a new use established pursuant to subsection (4)f or is an addition or alteration to a noncomplying structure allowed pursuant to subsection (7).
- ~~1. It does not conflict with the comprehensive plan;~~
  - ~~2. It complies with the performance criteria set forth in this section;~~
  - ~~3. Any non-water dependent component is located outside of the resource protection area; and~~
  - ~~4. Access will be provided with the minimum disturbance necessary. Where possible, a single point of access will be provided.~~
- e. Is a road or driveway crossing not exempt under subsection (6), below, and which complies with the provisions of this section, provided further:
1. The zoning administrator makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the RPA.
  2. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the RPA and (ii) adverse effects on water quality.
  3. The design and construction of the road or driveway satisfies all applicable criteria of this section, including submission of a WQIA; and
  4. The zoning administrator reviews the plan for the road or driveway proposed in or across the RPA in conjunction with a site plan, subdivision plan, and land disturbing or building permit application.
- f. Is a flood control or stormwater management facility that drains or treats water from multiple development projects or from a significant portion of a watershed provided:
1. The county has conclusively established that location of the facility within the RPA is the optimum location;
  2. The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;

3. The facility must be consistent with a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase I modification to the county's program;
4. All applicable permits for construction in state or federal waters must be obtained from the appropriate local, state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, the York County wetlands Board and the Virginia Marine Resources Commission;
5. Approval must be received from the County prior to construction;
6. Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed.
7. It is not the intent of this subdivision to allow a BMP that collects and treats runoff from only an individual lot or some portion of the lot to be located within a RPA.

(86) Exemptions in Resource Protection Areas (RPA)

a. *Exemptions for public utilities, railroads, and public roads and facilities.*

1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures ~~designed and constructed by the Virginia Department of transportation~~ in accordance with regulations promulgated pursuant to the Erosion and Sediment Control Law (section 10.1-560, et seq., Code of Virginia) ~~or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board and the Stormwater Management Act (Section 10.1-603.1 et seq., Code of Virginia)~~ or an erosion and sediment control plan and a stormwater management plan approved by the ~~Virginia Soil and Water Conservation Board~~ Virginia Department of Conservation and Recreation will be deemed to constitute compliance with this section.- The exemption of public roads is further conditioned on the following:

- a) Optimization of the public road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the RPA and adverse effects on water quality.

2. ~~Construction, installation, and maintenance of water, sewer, drainage and local public streets~~ natural gas and underground telecommunications and cable television lines owned, permitted or both by a local government or regional service authority shall be exempt from the ~~provisions~~ criteria in this part of this section provided that:

- a) To the degree possible, the location of such utilities and facilities shall be outside the RPAs;
- b) No more land shall be disturbed than is necessary to provide for the ~~desired~~ proposed utility installation;
- c) All construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and shall be designed and conducted in a manner that protects water quality; and
- d) Any land disturbance exceeding an area of ~~two thousand five hundred (2,500)~~ square feet [230m<sup>2</sup>] shall comply with all erosion and sediment control requirements.

b.3. ~~Exemptions in resource protection areas.~~ Water wells, passive recreation facilities such as publicly, community or homeowner association owned boardwalks, trails, and pathwalkways, and historic preservation and archaeological activities located in the RPA ~~resource protection areas~~ may be exempted from the provisions of this section provided that it is demonstrated to the satisfaction of the zoning administrator that:

- 1.a) Any required permits, except those to which this exemption specifically applies, shall have been issued;
- 2.b) Sufficient and reasonable proof is submitted to establish that the intended use will not cause a deterioration in water quality;



~~3.c)~~ The intended use does not conflict with nearby planned or approved uses; and

~~4.d)~~ Any land disturbance exceeding an area of ~~two thousand five hundred~~ (2,500)-square feet ~~[230m<sup>2</sup>]~~ will comply with chapter 10, Erosion and Sediment Control.

e) It is not the intent of this subsection to exempt private boardwalks, trails or walkways on an individual lot from the requirements of this section.

~~(9)~~(7) *Noncomplying use and development waivers.* The lawful use of a **principal** building or structure which existed on September 20, 1990, or which exists at the time of any amendment to this section, and which is not in compliance with the provisions of this section or such amendment thereto, may be continued in accordance with article VIII of this chapter.

No ~~change~~alteration or expansion ~~of use~~ of any noncomplying structure shall be allowed except in accordance with the following:

a. The zoning administrator may grant a noncomplying use and development waiver for legally existing principal structures on lots ~~or parcels~~ not in compliance with CBPA Chesapeake Bay Preservation Area standards to provide for remodeling, and alterations ~~or and~~ additions to such noncomplying structures provided that:

1. There will be no increase in the nonpoint source pollution load;

2. Any development or land disturbance exceeding an area of ~~two thousand five hundred~~ (2,500)-square feet ~~[230m<sup>2</sup>]~~ complies with all erosion and sediment control requirements of chapter 10, Erosion and Sediment Control; and

3. Accessory structures or additions to accessory structures shall not be authorized by noncomplying use and development waivers.

b. An application for a noncomplying use and development waiver shall be made to the zoning administrator and shall include, for the purpose of proper enforcement of this section, the following information:

1. Name and address of applicant and property owner;

2. Legal description of the property and type of proposed use and development;
  3. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the resource protection area; ~~and~~
  4. Location and description of any existing private water supply or sewage disposal system; ~~and~~
  5. A WQIA, BMP plan and buffer restoration plan as deemed necessary by the zoning administrator.
- c. A noncomplying use and development waiver shall become null and void ~~twelve (12) months~~ five years from the date issued if no substantial work, as determined by the zoning administrator, has commenced.
  - d. Noncomplying use and development waivers for legally existing principal structures processed through an administrative review of the application shall be subject to the findings required by subsection (8)a., such findings to be made by the zoning administrator, but without the requirement for a public hearing.

(108) ~~Exceptions~~ Variances.

- a. Variances to the CBPA requirements may be granted provided that a finding is made that:
  1. The requested variance is the minimum necessary to afford relief;
  2. Granting the variance will not confer upon the applicant any special privileges that are denied to other property owners who are subject to these provisions and similarly situated;
  3. The variance is in harmony with the purpose and intent of the CBPA Act and is not of substantial detriment to water quality;
  4. The variance request is not based upon conditions or circumstances that are self-created or self-imposed.
  5. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and

6. Other findings, as appropriate and required by the county, are met.

a.b. Variances to the CBPA requirements of ~~An application for an exception to the requirements of this section 24.1-372(h) (3), (4), (5), (6) and/or (7)~~ shall be made in writing by application to the board of zoning appeals. The board of zoning appeals shall identify the impact of the proposed exception variance on water quality and on lands within the RPA based on ~~a~~ the natural resources inventory, mitigation measures and WQIA which complies with the provisions of this section and which shall be submitted by the applicant at the time of application.

b.c. The board of zoning appeals shall review the application for ~~an exception~~ a variance and the submitted ~~Inventory~~ natural resources inventory and WQIA and may grant ~~such relief as it deems consistent with the purpose and intent of this section.~~ a variance to the requirements provided the above findings are made.

e.d. In granting an ~~exception~~ variance, the board of zoning appeals may impose reasonable and appropriate conditions as the board deems necessary to further the purpose and intent of this section and the Chesapeake Bay Preservation Act.

#### (9) Violations.

a. Any person who engages in development or redevelopment within a CBPA or modifies the buffer within a RPA without first receiving approval for such activity as prescribed by this section shall be in violation of this section.

b. Any person who violates any conditions of an allowed encroachment, buffer modification, noncomplying use and development waiver, variance, exemption or permitted activity or exceeds the scope of any approval of any authorized activity or who fails to comply with any other provision of this section shall be in violation of this section.

#### (10) Civil Penalties

a. Any person who violates any provision of this section or violates or fails, neglects, or refuses to obey any county notice, order, rule, regulation, or variance or permit condition authorized under this section shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation.

Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county for the purpose of abating environmental damage to or restoring the CBPA therein, in such a manner as the court may direct by order, except that where the violator is the county itself or its agent, the court shall direct the penalty to be paid into the state treasury.

- b. With the consent of any person who violates any provision of this section or violates or fails, neglects, or refuses to obey any county notice, order, rule, regulation, or variance or permit condition authorized under this section, the county may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county for the purpose of abating environmental damage to or restoring the CBPA, except that where the violator is the county itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1 of this subsection. Civil charges may be in addition to the cost of any restoration required or ordered by the county.

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